IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 6 of 2002
DATE OF DECISION: December 21, 2007

The Commissioner of Income-tax (Central), Ludhiana

…Applicant

Versus

M/s S.A. Builders Pvt. Ltd., Chandigarh

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. S.K. Garg Narwana, Advocate,
for the applicant-revenue.

Mr. Akshay Bhan, Advocate,
for the respondent-assessee.

M.M. KUMAR, J.

The Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (for brevity, 'the Tribunal'), in pursuance to the order dated 3.8.2000, passed by this Court in I.T.C. No. 97 of 1996 (arising out of Tribunal's order dated 18.7.1995, passed I.T.A. No. 805/Chandi/1989, in respect of assessment year 1984-85), has drawn

up the statement of the case and referred the following question of law for opinion of this Court:

> "Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the bank guarantee amounting to Rs. 5,25,000/- revoked and Rs. 76,139/- forfeited by the contractee for not completing the contract within the stipulated period constituted an allowable loss?"

Brief facts as emerged from the statement of the case drawn by the Tribunal are that the assessee is a building contractor and during the relevant assessment year 1984-85 was mainly engaged in the execution of building contracts of Government and other agencies. The assessee maintained its accounts on mercantile basis. During the relevant assessment year, the assessee claimed a total amount of Rs. 6,01,139/- as allowable deduction as loss. The Assessing Officer, however, rejected the claim of the assessee. On an appeal, the CIT (A) deleted the additions made by the Assessing Officer. On further appeal, the Tribunal decided the issue in favour of the assessee while relying upon its earlier order dated 9.9.1988, passed in I.T.A. No. 493/Chandi/1987, in the cases of assessee's own case in respect of assessment year 1983-84. It is apposite to notice that against the order dated 9.9.1988, passed in I.T.A. No. 493/Chandi/1987, the Tribunal referred a similar question for opinion of this Court being I.T.R. No. 37 of 1991 (The Commissioner of Income-tax, Patiala v. M/s S.A. Builders Pvt. Ltd., Chandigarh,

decided on 16.5.2007). The Division Bench of this Court, of which one of us (M.M. Kumar, J.) was a member, answered the question of law in favour of the assessee and against the revenue.

In view of above, following the same principle and precedent, the question referred is answered against the revenue and in favour of the assessee in terms of Division Bench judgment of this Court in I.T.R. No. 37 of 1991 (supra).

The reference is disposed of accordingly.

(M.M. KUMAR)
JUDGE

(RAKESH KUMAR JAIN)
JUDGE

December 21, 2007
Pkapoor